

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TONY AND MII’S, INC.	§	
TONY THANGSONGCHAROEN, and	§	
SOMNUEK THANGSONGCHAROEN	§	Case No. 3:17-cv-609-B
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
UNITED STATES OF AMERICA,	§	
	§	
Defendant.	§	

JOINT SUBMISSION AS TO PLAINTIFFS’ MOTION FOR SANCTIONS [DKT. #41]

In accordance with the Court’s December 12, 2018 Order, Dkt. 45 (the “Order”), Plaintiffs Tony and Mii’s, Inc., Tony Thangsongcharoen, and Somnuek Thangsongcharoen (“Tony and Mii’s”) and Defendant United States of America (“United States”) file this Joint Submission on the Plaintiffs’ Motion for Sanctions (the “Motion for Sanctions”) [Dkt. #41]. The parties will file a separate Joint Submission as to the United States’ Amended Emergency Motion for Protective Order (“Amended Motion for Protective Order”) [Dkt. #43].

On Wednesday, December 19, 2018, counsel for the parties met face-to-face at the offices of the Department of Justice, Tax Division, in Dallas, Texas. In attendance for Tony and Mii’s was Jason B. Freeman. In attendance for the United States were Cynthia E. Messersmith, Andrew L. Sobotka, Curtis C. Smith, and Moha P. Yepuri. The conference began at 9:00 a.m. and concluded at approximately 10:00 a.m.

The parties were able to resolve Plaintiffs’ Motion for Sanctions [Dkt. # 41]. The parties’ resolution of the Motion for Sanctions is set forth at follows.

THE UNITED STATES' PRELIMINARY STATEMENT

On Friday, December 7, 2018, the United States filed its Emergency Motion for Protective Order [Dkt. #38] seeking to (1) prevent the news media from attending pretrial depositions; and (2) obtain an Order from the Court confirming that the United States may produce its witnesses, including IRS witnesses, in offices of the United States. On Monday, December 10, 2018, Mr. Freeman filed Tony and Mii's Motion for Sanctions [Dkt. #41] seeking to have sanctions imposed against counsel for the United States, Curtis Smith and Moha P. Yepuri. Later that same day, on December 10, 2018, the United States filed its Amended Motion for Protective Order [Dkt. #43], seeking the same relief as sought in its original motion but having removed all statements from the original motion that were the basis for Plaintiffs' Motion for Sanctions. On December 12, 2018, the Court ordered that counsel for the parties participate in a face-to-face conference in attempt to resolve the issues raised in both motions. [Dkts. # 41,43].

Discovery has been open and proceeding in this matter since March 9, 2018. December 4, 2018, marks the first date on which Plaintiffs' have provided notice of any media involvement in any discovery.

TONY AND MII'S PRELIMINARY STATEMENT

The Plaintiffs do not object to the government's preliminary statement.

RESOLUTION OF TONY AND MII'S MOTION FOR SANCTIONS (ECF 41)

The parties have resolved the Motion for Sanctions. The United States agrees that that the use of the word "depositions" rather than "deposition" in a parenthetical on page 8 of its original Emergency Motion for Protective Order (ECF 38) and its Amended Motion for Protective Order (ECF 43) was typographical error and that the plural use of that word was incorrect. Counsel for Plaintiff had not indicated a news reporter would be attending more than one deposition. The United States and its counsel apologize for this error.

The United States agrees that the word “eavesdropped” on page 8 of its original Motion for Protective Order (ECF 38) was too strong and that the United States did not intend to suggest that the assistant to Plaintiff’s counsel had secretly or intentionally overheard a conversation between government attorneys and the IRS employee during a deposition break. The United States and its counsel apologize for this error, and promptly removed the objectionable language by filing the Amended Motion for Protective Order (ECF 43).

The United States agrees that the assertion on pages 8 and 9 of its original Motion for Protective Order (ECF 38) that Plaintiffs’ counsel or his assistant accused government counsel of instructing the IRS employee to continue to provide false testimony was not accurate and should not have been made. The United States and its counsel apologize for this error, and promptly removed the objectionable language by filing the Amended Motion for Protective Order (ECF 43).

Plaintiffs further agree that the statement on page 9 of the Plaintiffs’ Motion for Sanctions (ECF 41) that, “The government attorneys have previously indicated, as part of a strong-arm settlement posture, that they will make litigation costly for the plaintiffs—knowing that they are destitute” was too strong. Plaintiffs and their counsel apologize for this error.

Based on the foregoing, the Plaintiffs hereby withdraw their Motion for Sanctions (ECF 41), as they believe that the government’s efforts here have adequately addressed the concerns raised therein and that no further action is necessary with respect to that Motion.

CONCLUSION

Based on the foregoing representations, Plaintiffs withdraw their Motion for Sanctions (ECF 41).

/s/ Moha P. Yepuri
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CERTIFICATE OF SERVICE

I certify, that on December 21, 2018, I filed the foregoing using the Clerk's ECF system
which will serve an electronic copy on the following:

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/s/ Moha P. Yepuri
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